

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re: Flint Water Cases

Case No. 5:16-cv-10444-JEL-MKM
Honorable Judith E. Levy
Magistrate Judge Mona K. Majzoub

**CO-LIAISON COUNSEL'S RESPONSE IN OPPOSITION TO VNA
DEFENDANTS' MOTION TO INCREASE THE TIME ALLOTTED TO THE
ENGINEERING DEFENDANTS WHEN DEPOSING NON-PARTIES AND
STATE AND CITY ACTORS**

Co-Liaison Counsel for Individual Plaintiffs submits this Opposition to the VNA Defendants' Motion to Increase the Time Allotted to the Engineering Defendants when Deposing Non-Parties and State and City Actors, and respectfully requests that this Court either deny the motion in its entirety, or alternatively deny it in-part.

In simple terms, what the VNA Defendants are seeking is for the Court to take ninety (90) minutes from plaintiffs¹ allotted time in this consolidated action, and to reallocate said time to State Defendants,² while increasing their own time and the time of their non-governmental co-defendants'.

It should be noted that on March 29, 2019, the undersigned counsel filed a Notice of Motion to Disqualify the Michigan Attorney General's Office from all State Court Litigation Part of *In Re Flint Water Litigation* Case No. 17-108646. *See* Exhibit A attached hereto and incorporated by reference as if fully stated herein. It should also be noted that the LAN Defendants joined in the motion to disqualify on April 10, 2019, and Defendant McLaren joined in the motion on April 15, 2019. *See* Exhibit B attached

¹ The term "plaintiffs" here describes individuals alleging damages as a result of the Flint Water Crisis.

² State Defendants are simultaneously pursuing two distinct paths in parallel litigations that share discovery coordination orders: a *parens patriae* case in Genesee County and the defense of various defendants in both the Genesee County and Federal Litigations.

hereto and incorporated by reference as if fully stated herein. Curiously, despite previously agreeing that the State was placing itself in an untenable position by way of its simultaneous pursuits, during the parties' December 23, 2019 *Meet and Confer*, counsel for LAN and McLaren supported the current VNA proposal and insisted that the State was nothing more than a Plaintiff at these depositions. Considering the Genesee County Court has not yet ruled on the motion, it is hard to fathom what has changed for LAN or McLaren, but something certainly seems to have.

However, despite Defendants' new position on the State's involvement in the litigation, on November 21, 2019, former Emergency Manager Ed Kurtz was deposed. When the State took its turn (as a Plaintiff) questioning him, the first ten lines of the State's exam (as a Plaintiff) was as follows:

Q. All right. Mr. Kurtz, my name is Zach Larsen. I'm here as an assistant attorney general on behalf of the people of the State of Michigan in the AG v. Veolia case. I want to ask you a few questions in relationship to how you understood your job.

When you were first appointed as emergency manager in 2012 for your second term around, did you receive any instructions from former Governor Snyder as to how you were going to do your job?

It is hard to fully understand what the Governor's role in the *parens patriae* case is, such that the AG's office would lead with the issue in their deposition questioning of a former Emergency Manager. But For Veolia, LAN, and McLaren to justify a request for the Court to take time from individual plaintiffs who are alleging injuries, and transfer that time to another "plaintiff" whose counsel also represents at least one defendant they are suing (namely former Governor Snyder as a Defendant), is irrational.

To the extent the Court is inclined to mandate that additional time be provided to participating defendants in this litigation, such should be equally provided to individual plaintiffs that are not simultaneously defending the folks they are suing.

Respectfully,

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Dated: December 30, 2019

Certificate of Service

I hereby certify that on December 30, 2019, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing upon counsel of record.

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